

Submission

29 August 2025

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Via upload

Compensation Scheme of Last Resort: exceeding sub-sector levy caps

The National Insurance Brokers Association (NIBA) welcomes the opportunity to respond to Treasury's consultation on options for dealing with excesses arising under the Compensation Scheme of Last Resort (CSLR). As the peak body representing Australia's general insurance broking profession, NIBA is committed to ensuring regulatory settings remain proportionate, effective, and aligned with the CSLR's original intent.

The current funding pressures on the CSLR arise almost entirely from the large number of unpaid AFCA determinations linked to financial advice misconduct and the high-profile collapses of a number of financial advice firms, including Dixon Advisory and United Global Capital, which alone account for 92% of the expected claims paid for the 2025/26 financial year.

Looking ahead, the recent failures of entities such as First Guardian, Shield Master Fund and Australian Fiduciaries are expected to generate further significant liabilities. These events highlight both the importance of the CSLR in ensuring consumer redress and the need to maintain its focus on sectors where the risks are concentrated. It is critical that these circumstances do not become a pretext for expanding the scheme's reach to sectors which have not contributed to unpaid determinations.

NIBA has consistently supported strong consumer protections and fair dispute resolution mechanisms while also advocating for policy settings that recognise the distinct role of insurance brokers. General insurance intermediaries are excluded from the CSLR in recognition of the low number of unpaid AFCA determinations involving the sector. This position was carefully considered through the original scheme consultation and subsequent policy design processes. Expanding the scheme's funding base to include insurance sectors that have not contributed to unpaid determinations, either directly or indirectly, would be unjustified, disproportionate, and inconsistent with the scheme's purpose.

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About NIBA

NIBA is the peak representative body for the general intermediated insurance profession. NIBA serves as the collective voice of approximately 450 member firms and 15,000 individual brokers. Our membership encompasses a diverse range of entities, including large multinational insurance brokers, Australian broker networks, as well as small and medium-sized businesses located in cities and regional areas around Australia. NIBA advocates for the interests of general insurance brokers and their clients, ensuring that the general industry operates with integrity and professionalism.

NIBA's work is guided by our core pillars: community, representation, and professionalism. NIBA's mission is to enhance the professional standing of insurance brokers through robust advocacy, education, and ethical standards. By fostering a collaborative and innovative environment, NIBA aims to elevate the quality of service provided to consumers, strengthening trust and confidence in the insurance broking profession.

Principles guiding decisions

When determining how the CSLR funding shortfall should be apportioned, the Minister should be guided by the five principles: proportionality, fairness, efficiency, sound economic policy, and alignment with the original policy intent of the CSLR.

Proportionality

Proportionality requires that the burden of funding the CSLR reflects the scale of risk and consumer harm caused by each sector. A levy that is carefully calibrated to the size of the problem within the financial advice sector ensures that costs are aligned with demonstrated evidence of unpaid determinations. Extending the levy to unrelated professions, where the incidence of unpaid determinations is negligible, would be disproportionate and unjustified. Such an approach would not only impose unnecessary costs on small businesses and their clients but would also fail to recognise the absence of systemic risk in those professions.

Fairness

Fairness requires that the costs of the CSLR are borne by those sectors whose conduct has given rise to unpaid determinations, rather than by professions with no connection to the underlying problem. Requiring unrelated sectors to contribute would shift responsibility away from those who have caused consumer harm, undermining accountability and creating an inequitable outcome. Such an approach would impose unwarranted financial burdens on professions like insurance broking, which have a strong track record of meeting obligations, ultimately raising costs for consumers without delivering any additional protection. A fair system ensures that liability follows responsibility, aligning the funding burden with those who generate the risk.

Efficiency

It is vital that costs are allocated to the sectors that create and contribute to the underlying risk. This approach ensures resources are directed where they are most needed, avoids market distortions, and reinforces accountability within those sectors where misconduct has generated consumer harm. By contrast, spreading costs across unrelated professions would be inefficient, unfair, and inconsistent with good regulatory practice. Such an approach would create cross-subsidies that weaken the incentive for accountability in high-risk sectors, while imposing unnecessary costs on professions with no demonstrated link to the problem. The result would be higher consumer prices in areas where no

systemic misconduct has been identified, without addressing the root causes of unpaid determinations.

Sound economic policy

Sound economic policy requires that the CSLR is funded in a way that promotes efficiency, accountability, and stability across the financial system. Allocating costs to the sectors responsible for unpaid determinations ensures that those sectors face the true cost of their risk, creating stronger incentives for compliance and better consumer outcomes. By contrast, spreading costs across unrelated professions introduces market distortions, undermines competition, and creates unfair cross-subsidies. It also generates moral hazard by reducing the incentive for high-risk sectors to strengthen compliance and risk management, knowing that costs can be shifted onto others. Such an approach would not address the underlying drivers of unpaid determinations, while raising costs for consumers in areas where no misconduct has been identified. A well-designed funding framework must therefore minimise distortion, maintain competitive neutrality, and ensure that incentives for responsible conduct remain firmly within the sectors that generate the risk.

Policy Intent

The CSLR was deliberately designed to be tightly focused on areas with a history of unpaid determinations, primarily financial advice. This reflects the recommendations of the Ramsay Review and the Government's subsequent decision to limit the scheme to sectors with clear evidence of systemic problems. To broaden the levy to include professions such as insurance broking, where there is almost no evidence of unpaid determinations, would undermine this policy intent. It would also weaken confidence in the scheme by penalising sectors that have consistently met their obligations. Preserving the original scope of the CSLR is essential to maintain trust, integrity, and confidence in the system.

Matters that should not be considered

The existence of levy collection mechanisms across other sub-sectors should not be regarded as justification for expanding the levy burden. Collection mechanisms alone do not provide an evidentiary basis for inclusion. To adopt such reasoning would risk turning the CSLR into a generalised levy on the broader financial system.

The scheme was never intended to function as a generalised pool across unrelated sub-sectors, and extending it in this way would undermine confidence in its fairness and proportionality. From an economic perspective, taxing sectors that have no causal link to the misconduct introduces inefficiency, raising costs for consumers without improving consumer protection outcomes.

Repeatability

Any approach to addressing CSLR funding shortfalls must be sustainable in the event that excesses arise in future years. A genuinely sustainable solution lies in reinforcing accountability within the sectors already in scope. This includes ensuring firms maintain and comply with professional indemnity insurance requirements, which are designed to provide a primary safeguard for consumers. It also requires strengthening compliance and supervisory frameworks to reduce the risk of unpaid determinations arising in the first place. In addition, the CSLR's right to subrogation should be exercised as a priority so that costs are recovered directly from failed firms before being passed on to other participants.

By focusing on these measures, the CSLR can remain true to its original purpose: providing targeted redress to consumers where demonstrable risks exist, while avoiding the unnecessary expansion of costs to compliant professions. This approach ensures the scheme is not only fair and proportionate but also sustainable over the long term.

Appropriate options for 2025–26

The most appropriate way to address the 2025–26 funding shortfall is through a special levy confined to the primary sub-sector responsible for the unpaid determinations, namely financial advice. This reflects the CSLR's policy intent, is administratively simple, and ensures costs are borne in direct proportion to the conduct and risk profile of the sector that generated the claims.

While this approach will place the financial burden on the financial advice sector, this is justified given that the unpaid determinations originate there. Firms in this sector are already required to hold professional indemnity insurance to meet AFCA determinations, and enforcing compliance with this obligation would significantly reduce the burden on solvent firms. By contrast, extending levies to unrelated professions such as general insurance broking would impose costs on businesses and consumers without improving consumer protection outcomes.

If additional measures are considered necessary, deferring compensation payments through instalments could be an appropriate supplementary mechanism. However, this should only be pursued in ways that balance consumer needs with sustainability, ensuring that vulnerable claimants are not left uncompensated for extended periods.

The preferred approach is repeatable over time, provided complementary measures are taken to reinforce accountability. These include strict enforcement of PI insurance arrangements, consistent use of the CSLR's subrogation rights to recover costs from failed firms, and robust regulatory oversight to prevent systemic failures from recurring. Together, these measures will keep the scheme fair, targeted, and sustainable, avoiding unjustified imposts on unrelated professions and strengthening consumer confidence in its long-term operation.

Combination with instalments

If instalments are used in conjunction with a levy, care must be taken to ensure costs are spread fairly over time without creating unintended consequences for consumers. It may be appropriate to defer part of the excess into future years if this avoids immediate financial strain on the financial advice sector and reduces the risk of firms passing on sharp price increases to consumers in the short term. However, the bulk of the costs should remain with that sector to preserve the principle that the CSLR is funded by those whose conduct has generated unpaid determinations. This approach balances fairness across time with consumer protection, ensuring the scheme remains sustainable while continuing to provide necessary safeguards for consumers.

Connection to underlying conduct

The question of whether another sub-sector should contribute to funding shortfalls must be assessed through the lens of fairness, proportionality, and evidence. Contributions should only be considered where there is clear and demonstrable evidence that the sub-sector in question is directly connected to the misconduct that has given rise to unpaid AFCA determinations. Without such evidence, expanding the levy base would undermine the credibility and integrity of the scheme.

Key factors that must be established before any sub-sector is considered include:

- Whether unpaid AFCA determinations have in fact arisen in that sub-sector.
- Whether professional indemnity (PI) insurance arrangements in the sub-sector were adequate and complied with.
- Whether existing enforcement mechanisms have been effective in ensuring firms meet their obligations.

In determining whether to apportion costs to an additional sub-sector, the Minister should require robust, objective evidence demonstrating:

- Unpaid AFCA determinations that are clearly attributable to that sub-sector.
- Regulatory findings identifying systemic misconduct, failures in compliance, or weaknesses in consumer protection frameworks.
- A direct and causal link between the conduct of the sub-sector and the consumer losses in question.

Absent such evidence, imposing a levy on a sub-sector would not only be unjustified but also risk creating inefficiencies and unfair cross-subsidies. It would penalise professions with strong compliance records, erode trust in the CSLR, and increase costs for consumers in sectors that have no connection to the underlying problem. The scheme's legitimacy depends on maintaining this discipline: only those sectors responsible for misconduct that generates unpaid determinations should bear the costs.

Capacity to pay

Capacity to pay, in isolation, should not be used as a basis for determining which sectors are required to fund CSLR shortfalls. The scheme was established to address demonstrable risks of unpaid determinations, not to redistribute costs to those perceived to have stronger balance sheets. Doing so would fundamentally shift the scheme away from its policy intent and towards a generalised industry tax.

Applying a "capacity to pay" test would distort proportionality, well-regulated and compliant professions, with costs unconnected to their conduct. This approach would penalise well-regulated and compliant professions, increase costs for consumers in those markets, and create perverse incentives by weakening accountability in the high-risk sectors that generated the problem.

The legislation requires that the CSLR is effective in meeting claims, but effectiveness cannot be pursued in isolation. It must be considered in tandem with sustainability, proportionality, and fairness. A model that prioritises short-term capacity to pay over these principles risks eroding trust in the scheme, distorting competition, and undermining consumer confidence in both the CSLR and the regulatory framework more broadly.

A fair and sustainable approach is therefore one that ensures those sectors responsible for unpaid determinations bear the cost of redress. This preserves the link between risk and responsibility, avoids unjustified cross-subsidies, and ensures the CSLR remains both credible and durable over time.

Levying all retail-facing sub-sectors

NIBA does not support imposing a levy on all retail-facing sub-sectors. Such an approach disregards the CSLR's policy intent and would unfairly spread costs to professions with no connection to unpaid AFCA determinations. For small businesses such as insurance brokers, this would mean higher operational costs that ultimately flow through to consumers and reduce access to professional advice.

None of the methodologies proposed by Treasury, whether based on population, revenue, profit, or regulatory effort, accounts for the absence of risk from sectors like broking, and would therefore produce unjust and distortionary outcomes.

Maintaining the CSLR's credibility requires that funding arrangements remain firmly tied to the sectors responsible for the conduct that gives rise to unpaid determinations. Diluting this accountability by levying all retail-facing sub-sectors would weaken the scheme's focus, create inequities between professions, and reduce its long-term sustainability.

Other issues

NIBA strongly encourages the government to prioritise strengthening regulatory oversight and enforcement of existing obligations as the most effective and sustainable way to manage excess CSLR costs.

A key focus must be on ensuring that professional indemnity insurance requirements are rigorously enforced. Where firms in scope maintain adequate PI cover, AFCA determinations can be met without shifting costs onto others. Failure to enforce these obligations weakens accountability and ultimately leaves consumers worse off.

The CSLR operator should also be required to fully exercise its subrogation rights before any costs are passed on to other market participants. This ensures that those responsible for misconduct bear the financial consequences, while giving consumers confidence that every reasonable avenue of recovery has been pursued.

Government should also consider targeted mechanisms that draw on the capacity of large, prudentially regulated institutions in extraordinary circumstances, consistent with the one-off pre-CSLR levy. This would provide a backstop for systemic events without undermining the core principle that costs should remain closely linked to the sub-sectors responsible for misconduct.

Taken together, these measures would protect consumers, strengthen accountability, and preserve the long-term sustainability of the scheme. They would also ensure that costs remain targeted and proportionate, avoiding the unjust and economically inefficient outcome of burdening unrelated professions such as insurance broking.

Conclusion

The Compensation Scheme of Last Resort is an important safeguard for consumers, but its effectiveness depends on maintaining a funding model that is proportionate, fair, and consistent with its original policy intent. The evidence shows that unpaid determinations have arisen in limited parts of the financial system. It follows that any additional levy to address the 2025–26 funding shortfall should be confined to those specific areas where the risk has materialised, rather than spread across unrelated professions which have no demonstrated history of unpaid claims.

Extending costs beyond the sectors responsible would undermine fairness, create inefficient cross-subsidies, and generate moral hazard by weakening accountability where it is most needed. It would also impose unnecessary financial pressure on small businesses and consumers in areas where the CSLR was never intended to apply.

Instead, government should adopt a targeted and principled approach. This means confining levies to the sectors that generate the claims, enforcing professional indemnity insurance obligations to reduce future defaults, and ensuring the CSLR exercises its subrogation rights before costs are socialised. Together, these measures will protect consumers, reinforce accountability, and ensure the scheme operates sustainably and in line with its founding intent.

NIBA urges government to remain guided by the principles of proportionality, fairness, and sound economic policy. A targeted, disciplined approach will preserve trust in the CSLR, strengthen consumer protection, and avoid placing unwarranted burdens on professions that continue to meet their obligations.

NIBA appreciates the opportunity to contribute to this consultation and would be pleased to engage further with Treasury. Should you have any queries in relation to this submission or wish to discuss any of the matters raised, please do not hesitate to contact Allyssa Hextell, Head of Policy and Advocacy, at ahextell@niba.com.au.

Yours sincerely,



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